

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ANITA MAYS and KENNETH MAYS)	
Individually and as Natural Parents and Next)	
Friends of their daughter KATHRYN MAYS,)	
a minor, and F/U/B of their daughter)	
)	
v.)	No. 3:17-cv-00180
)	JURY TRIAL DEMANDED
CONVERSE, INC.)	

**ORDER APPROVING COMPROMISE AND SETTLEMENT
OF A MINOR’S CLAIM
AND FINAL ORDER OF DISMISSAL**

This case is submitted to the Court to approve the mediated compromise and final settlement of all claims in the above-referenced action. The settlement includes all claims of the minor, Kathryn Mays (“minor”), by the minor’s parent and legal guardians, Anita Mays and Kenneth Mays, and all of the individual claims of plaintiffs Anita Mays and Kenneth Mays against Converse, Inc. (“Converse”).

Based upon a review of the file in this case, the record as a whole, and the statements of counsel, the Court is of the opinion and finds as follows:

1. The minor's date of birth is xx/xx/2006.
2. The minor resides with her parents, Anita Mays and Kenneth Mays, in Collierville, Shelby County, Tennessee.
3. Plaintiffs Anita Mays and Kenneth Mays allege that on January 1, 2016, while they and the minor child were shopping at defendant’s store #274 in Nashville, Davidson County, Tennessee, the minor was injured she tripped and fell on a foot measuring gauge on the floor in the store.

4. Plaintiffs allege that the minor child sustained a triplane fracture, which is a fracture at the epiphyseal plate (growth plate) of the tibia. She was initially treated at Vanderbilt's Monroe Carell Jr. Children's Hospital emergency department with closed manipulation of the fracture, and in lieu of an invasive surgical intervention, a long-leg bivalve cast was applied. Her follow up medical care was provided by orthopedic physician, Dr. Derek Kelly of the Campbell Clinic in Memphis. Her original cast was transitioned to a short leg cast and finally to an orthopedic boot. Kathryn had some physical therapy and she was released by Dr. Kelly in July, 2016, within six months of the accident. Dr. Kelly has not assigned any permanent anatomical impairment rating for Kathryn's injury. Kathryn returned to school on or about January 25, 2016. Kathryn has resumed all of her normal daily activities and she does not demonstrate any current symptoms or restrictions in her normal daily activities.

5. Converse disputes liability.

6. The parties attended mediation on January 23, 2018 and agreed to compromise and settle all claims of the minor against Converse, including all derivative claims of her parents, Anita Mays and Kenneth Mays, for Forty Thousand Dollars (\$40,000). The Defendant is to pay the mediation costs

7. Blue Cross and Blue Shield, paid \$2,629 for Kathryn's medical bills and Benefit Recovery Solutions is seeking Blue Cross' subrogation recovery. Plaintiffs have represented that the only potential lien holder is Benefit Recovery Solutions. Benefit Recovery has said that its interest is \$2,100 and that it will resolve the claim for \$2,100.

8. Plaintiffs shall be solely responsible for satisfying from the settlement proceeds any medical liens or other subrogation claims which may exist.

9. Plaintiffs shall be solely responsible for paying from the settlement proceeds any and all medical expenses which have been or will be incurred.

10. Plaintiffs retained attorney Bruce D. Brooke to represent them and their minor daughter. Plaintiffs agreed to a one third (33.33%) contingency attorney fee plus reimbursement for any expenses advanced. The one third contingency fee for the mediated compromised settlement amount of \$40,000.00 is \$13,333.00 and counsel's advanced expenses total \$737.00. Consequently, \$14,060.00 is the amount for the total fee and expenses advanced. In lieu of the total amount contracted for, Attorney Brooke is requesting a discounted total fee and expenses advanced reimbursement in the amount of \$12,500.00. Plaintiffs believe that the requested amount is fair and reasonable.

11. Based upon the total \$40,000.00 settlement amount less the deduction of the \$12,500.00 attorney fee and expenses advanced and the reimbursement payment of the \$2,100.00 subrogation claim, the total amount of funds to Kathryn would be \$25,400.00. In accordance with T.C.A. § 34-1-102, plaintiffs request that Kathryn's \$25,400.00 settlement funds be disbursed to Plaintiffs as Kathryn's guardians and the funds will then be deposited in an interest bearing guardianship account for her at a federally insured bank until she attains her eighteenth (18th) birthday, at which time the monies in the account will be available to her. In the alternative, Plaintiffs request that Kathryn's \$25,400.00 be deposited with the Clerk of this Court, who should then deposit the funds into a Federal insured bank in an interest bearing account until she attains her eighteenth (18th) birthday, i.e., February 12, 2024, at which time the Clerk of this Court will distribute to Kathryn the accumulated balance of the funds. Kathryn's date of birth is February 12, 2006; consequently, her 18th birthday will be on February 12, 2024.

12. The compromise and settlement reached between the parties in this case is fair and reasonable to all parties under the circumstances; it is in the best interest of the minor; and it should be approved and ratified by this Court.

13. Anita Mays and Kenneth Mays are the legal guardians of the minor and are acting exclusively in the minor's best interests.

14. The execution of this order bars any further claims by the minor and all derivative claims of plaintiffs Anita Mays and Kenneth Mays in their individual capacities as well as on behalf of the minor against Converse related to the alleged incident at the Nashville, Tennessee store on January 1, 2016.

Based upon the foregoing, **it is ORDERED** that all claims of the minor Kathryn Mays, including all derivative claims of plaintiffs Anita Mays and Kenneth Mays in their individual capacities as well as on behalf of the minor, against Converse are hereby settled and compromised pursuant to the agreement of the parties recited above and in accordance with Tenn. Code Ann. § 34-1-121.

It is further ORDERED that this order reflects the full and final compromise and settlement of all claims of the minor and on behalf of the minor against Converse which arise out of the alleged incident at the Nashville, Tennessee store on January 1, 2016.

It is further ORDERED that a settlement check in the amount of Forty Thousand Dollars (\$40,000) will be paid directly to " Anita Mays and Kenneth Mays, individually and as next friend to Kathryn Mays, and their attorney, Bruce D. Brooke."

It is further ORDERED that Anita Mays and Kenneth Mays are the natural parents and the legal guardians of the minor and are acting exclusively in the minor's best interests.

It is further ORDERED that the execution of this order bars any further claims by the minor or on behalf of the minor or by anyone acting on her behalf against Converse. The Court further finds that the above settlement provisions are in the best interests of the minor, Kathryn Mays, and are accordingly approved.

It is further ORDERED that counsel for plaintiffs Anita Mays and Kenneth Mays shall pay \$2,100 directly to Benefit Recovery Solutions and that shall resolve Benefit Recovery Solution's interest.

It is further ORDERED in accordance with T.C.A. § 34-1-102, that \$25,400.00 settlement funds be disbursed to Plaintiffs as Kathryn's guardians and the funds will then be deposited in an interest bearing guardianship account for her at a federally insured bank until she attains her eighteenth (18th) birthday, at which time the monies in the account will be available to her. ~~In the alternative Plaintiff Kathryn's \$25,400.00 shall be deposited with the Clerk of this Court, who will then deposit the funds into a Federal insured bank in an interest bearing account and the monies her eighteenth (18th) birthday, i.e., February 12, 2024, at which time the Clerk of this Court will distribute to Kathryn the accumulated balance of the funds.~~ Kathryn's date of birth is February 12, 2006; consequently, her 18th birthday will be on February 12, 2024.

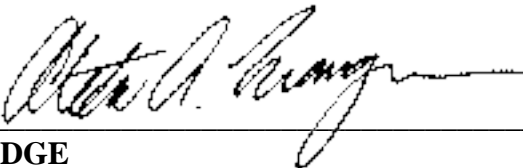
It is further ORDERED that \$12,500.00 will be distributed to Bruce D. Brooke, as attorney fee and expenses.

It is further ORDERED that from the settlement proceeds, Anita Mays and Kenneth Mays shall be solely responsible for satisfying any medical liens or other subrogation claims which may exist related to this incident.

It is further ORDERED that from the settlement proceeds, plaintiffs Anita Mays and Kenneth Mays shall be solely responsible for paying any and all additional medical expenses which she or the minor plaintiff will incur related to this incident.

It is further ORDERED that this action against Converse, Inc., is hereby dismissed with prejudice. This Order constitutes the judgment in this case.

IT IS SO ORDERED this 30th day of March, 2018.



JUDGE

APPROVED FOR ENTRY:

s/ Bruce D. Brooke (with express permission by G. Andrew Rowlett)

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